APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,726	11/25/2003	Gary P. Raden	MS306092.01	5768

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AMIN. TUROCY & CALVIN, LLP
24TH FLOOR, NATIONAL CITY CENTER
1900 EAST NINTH STREET
CLEVELAND, OH 44114

EXAMINER
JEAN GILLES, JUDE

ART UNIT	PAPER NUMBER
2143	

NOTIFICATION DATE	DELIVERY MODE
02/22/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket1@thepatentattorneys.com
hholmes@thepatentattorneys.com
osteuball@thepatentattorneys.com

		Application No.	Applicant(s)
Office Action Summary		10/721,726	RADEN ET AL.
		Examiner	Art Unit	
		Jude J. Jean-Gilles	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>30 October 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1- 37, and 39-41</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1- 37, and 39-41</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>25 November 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>04/12/2007, and 04/12/2007</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

This office action is responsive to Reply filed on 10/30/2007.

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/30/2007 has been entered.

Response to Arguments

2.   Applicant's arguments with respect to claims 1-37, and 39-41 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claim 1: Claim 1 recites the steps of "*A system that facilitates determining a state of a networked system, comprising: a component that obtains system data corresponding to a plurality of system components that reside on the networked system; and an aggregator that analyzes at least a subset of the system data and generates an output corresponding to a state of a subset of the plurality of system components, the output utilized to automatically limit a user's utilization of at least one aspect of the networked system.*" These steps fails to definitely recite a hardware executing the computer software, rendering the claim as recited only an abstract idea. The claim equates merely to a computer code or concept per se since "*a component or an aggregator*" in the context of the claimed invention are interpreted by the Examiner to represent computer software or concept, which does not have a practical application or tangible result.

 Regarding claims 2-37: Claims 2-37 are also nonstatutory. The independent claims are nonstatutory because of the reason underlined for the rejection of claim 1 and the dependent claims are nonstatutory because they depend on a nonstatutory base claim.

 Appropriate correction is required. The above noticed problems are just exemplary. Applicant is required to totally check the application for error and correct the same.

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1- 37, and 39-41 are rejected under 35 U.S.C. 102(e) as being

anticipated by Rayes et al (Rayes), U.S. Pub. No. 20050086502 A1.

3.   Regarding claim 1- 37, and 39-41 Rayes teaches:

1.   A system that facilitates determining a state of a networked system (fig. 1),

comprising:

a component that obtains system data corresponding to a plurality of system

components that reside on the networked system (0048; controller 110); and

an aggregator that analyzes at least a subset of the system data and generates an

output corresponding to a state of a subset of the plurality of system components, the

output utilized to automatically limit a user's utilization of at least one aspect of the

networked system (0055-0057, 0060, 0120, item 106, 102a-n).

2.   The system of claim 1, additionally comprising a remote access component

that provides a user with remote access to the output (0125).

3.   The system of claim 1, the component comprising a polling component that

polls the plurality of system components to obtain the system data (0048).

4.   The system of claim 1, the aggregator comprising a distributed database engine (item 124).

5.   The system of claim 1, the aggregator aggregates the system data in accordance with predetermined rules (0060, 0073, and 0087).

6.   The system of claim 5, the predetermined rules comprising aggregation of data within a single system (0120).

7.   The system of claim 5, the predetermined rules comprising aggregation of data with a plurality of systems (0120).

8.   The system of claim 1, at least one of the plurality of system components comprising a system component that sends data to the component unprompted.

9.   The system of claim 8, the unprompted system component utilizes at least one ~~selected from the group consisting~~ of unicasting, multicasting, and or broadcasting techniques to send data to the component (0047-0048).

10.   The system of claim 1, the system components comprising a plurality of components on at least one server (items 330, 126).

11.   The system of claim 1, the system components comprising at least one ~~selected from the group~~ consisting of a running process, a data source, and or a data log (0088).

12.   The system of claim 1, the output comprising hidden information obtained via data mining of aggregated system data (0051, 0060, and 0120).

13.   The system of claim 12, the hidden information comprising at least

one ~~selected from the group~~ consisting of system diagnosis information and or system prognosis information (0063, and 0087).

14.   The system of claim 1, the output comprising a user customizable output (0063, and 0087).

15.   The system of claim 1, the output comprising a status report (0063, and 0087).

16.   The system of claim 15, the status report relating to at least one ~~selected from the group consisting~~ of system performance data, system health data, and or system utilization data (0063, and 0087).

17.   The system of claim 1, the output comprising at least one schema table to provide optimal access of data relating to the output (0125).

18.   The system of claim 1, the output utilized to detect faulty errors in the networked system (0044, 0047.

19.   The system of claim 1, the output utilized to provide automatic ~~system~~ software updates <u>to at least one system component on the networked system</u> in response to the state of the subset of the plurality of system components (0128).

20.   The system of claim 1, the output comprising at least one system control parameter (0053, and 0121).

21.   The system of claim 20, the system control parameter comprising at least one of a load shed command or a load balancing command (0053, and 0121).

22.   The system of claim 20, the system control parameter comprising a security preservation action to maintain security of at least one networked system (0048, and 0053).

23.   The system of claim 20, the system control parameter comprising

a remedial action to maintain operation of at least one <u>system component</u> on the

networked system (0048).

24.   The system of claim 1, the state comprising at least one of a previous state, a

current state, and or a future state (0053, 0055, and 0059).

25.   The system of claim 1, the state comprising a health status state of a

networked system comprising the plurality of components (0048, and 0055).

26.   The system of claim 25, the health status state comprising at least

one consisting of a previous health status state, a current health status state, and or a

future health status state (0053, 0055, and 0059).

27.   The system of claim 1, at least a portion of the system data

corresponding to the plurality of system components is generated by at least one health

monitor, a performance monitor, and or a utilization monitor (0048, and 0055).)28.

        A method for facilitating state determination of a networked

system (figs 1-3), comprising:

        obtaining system data corresponding to a plurality of system components that

reside on the networked system, <u>the system data contains at least information regarding</u>

<u>utilization of system resources</u> (0048, 0069-0070, 0078)<u>;</u>

        aggregating, according to predetermined rules, at least a portion of the system

data corresponding to at least a subset of the plurality of system components; analyzing

at least a portion of the aggregated system data; generating an output corresponding to

a state of the subset of the plurality of system components; and <u>automatically restricting</u>

utilization of at least one resource of the networked system based at least on the

aggregated system data (0055-0057, 0060, 0120, item 106, 102a-n).

29.   The method of claim 28, further comprising: sending the output to a selectable

recipient at a selectable rate in a selectable manner (0125; 0121).

30.   The method of claim 28, further comprising: customizing the output according to

a set of rules determined by a user (0125; 0121).

31.   The method of claim 28, further comprising: controlling an aspect of the

networked system in response to the output corresponding to the state of the subset of

the plurality of system components (0125; 0121; 0087, 0063).

32.   The method of claim 31, the aspect comprising an operational system

parameter responsible for maintaining operation of the networked system (0038).

33.   The method of claim 28 further comprising automatically updating software on a

system component when a software bug is detected (0051).

34.   A system that facilitates determining a state of a networked system, comprising:

means for obtaining system data corresponding to at least a subset of a plurality of

system components that reside on the networked system, the system data contains at

least information regarding utilization of system resources (0048, 0069-0070, 0078);

and means for aggregating at least a portion of the obtained data; and means for

analyzing at least a subset of the portion of the obtained data to generate an output

corresponding to a state of the subset of the plurality of system components means for

prioritizing utilization of at least one resource on the networked system; and means for

automatically curtailing utilization of a resource by a first user of the networked system

when a second user with a higher utilization priority requires the same resource(0055-

0057, 0060, 0120, item 106, 102a-n).﹒

35.   A system that employs at least one system of claim 1 to provide a remotely

accessible state determination service (0125).

36.   The system of claim 35, the state determination service comprising an

aggregation, analysis, and control service for at least one networked system pertaining

to at least one system administrator (0089, 0109, and 0120).

37.   A method that employs the method of claim 28 in a multiple networked

system service environment to determine and predict common errors across at least a

subset of the multiple systems (0044, and 0047).

39.   A computer readable medium having stored thereon computer executable

components of the system of claim 1. A device employing the method of claim 28

comprising at least one of a computer, a server, and or a handheld electronic device

(items 330, 126).

41.   A device employing the system of claim 1 comprising at least one of a computer,

a server, and or a handheld electronic device (items 330, 126).

Conclusion

7　　This action is Non-Final. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn, can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 272-3201.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0800.

Jude Jean-Gilles

Patent Examiner

Art Unit 2143

July 12, 2007